· X

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

YORKSHIRE TOWERS COMPANY L.P., et ano.

11 CIV 1058 (TPG)

Plaintiffs,

NOTICE OF MTA DEFENDANTS' MOTION TO DISMISS

- against -

UNITED STATES DEPARTMENT OF TRANSPORTATION, et al.,

Defendants.

PLEASE TAKE NOTICE that defendants Metropolitan Transportation Authority, Jay H. Walder in his capacity as its Chairman, New York City Transit Authority, Thomas F. Prendergast in his capacity as its President, Metropolitan Transportation Authority Capital Construction Company, and Michael Horodniceanu in his capacity as its President (collectively, the "MTA Defendants"), upon the complaint, the annexed Declaration of Philip E. Karmel and the exhibits thereto, and the points and authorities set forth in the Memorandum of Law submitted herewith, will move this Court before the Honorable Thomas P. Griesa at the United States Courthouse, 500 Pearl Street, Courtroom 26B, New York, New York, on a date and time to be determined by the Court, for an Order pursuant to Fed. R. Civ. P. 12(b)(6):

- (i) dismissing plaintiffs' federal claim under the National Environmental Policy Act and Administrative Procedure Act (Count I of the complaint) with prejudice on the ground that it is barred by the statute of limitations; and
- (ii) declining to exercise supplemental jurisdiction over plaintiffs' state claims under the State Environmental Quality Review Act ("SEQRA") and General Municipal Law

("GML") (Counts II and III of the complaint, respectively) and dismissing them without prejudice; or, alternatively,

(iii) dismissing plaintiffs' SEQRA and GML claims with prejudice on the grounds that they fail to state a claim upon which relief may be granted because: (a) the New York Public Authorities Law exempts the Second Avenue Subway project from SEQRA in the circumstances presented here, (b) the SEQRA claim would in any event be barred by the statute of limitations, (c) the defendants are not subject to GML § 51 because they are neither municipalities nor municipal officials, and (d) in any event the complaint does not plead any allegations akin to fraud or embezzlement that would establish a predicate for a GML § 51 claim even if that statute did apply to the defendants; and

(iv) granting defendants such further and additional relief as the Court may deem just and equitable.

Pursuant to Local Rule 6.1(b), papers in opposition to this motion must be served 14 days after service of the moving papers, or at such other time as may be required by the Court.

Dated: New York, New York September 1, 2011

Yours, etc.

BRYAN CAVE LLP

Philip E. Karmel (pekarmel@bryancave.com)
J. Kevin Healy (jkhealy@bryancave.com)

1290 Avenues of the Americas New York, New York 10104-3300 Telephone: (212) 541-2000

Attorneys for Defendants Metropolitan
Transportation Authority, Jay H. Walder in his
capacity as its Chairman, New York City Transit
Authority, Thomas F. Prendergast in his capacity as
its President, Metropolitan Transportation
Authority Capital Construction Company, and
Michael Horodniceanu in his capacity as its
President

TO: Jeffrey E. Glen, Esq.
Rene F. Hertzog, Esq.
Anderson Kill & Olick, P.C.
1251 Avenue of the Americas
New York, New York 10020
Attorneys for Plaintiffs

Joseph J. Ceccarelli, Esq. Erik J. Berglund, Esq. Ceccarelli Weprin PLLC Two Wall Street New York, New York 10005 Attorneys for Plaintiffs

Preet Bharara
United States Attorney for the Southern District of New York
By: Joseph A. Pantoja
Assistant United States Attorney
86 Chambers Street
New York, New York 10007
Attorney for the Federal Defendants